APPELLANT'S BRIEF,

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No 280.

S A. AND S. C. HASELTINE AND S. I. AND L. K. HASELTINE, PLAINTIFFS IN ERROR,

vs.

THE CENTRAL NATIONAL BANK OF SPRINGFIELD, MISSOURI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

JAMES BAKER,
Attorney for Appellants.

(17,760.)

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STATEMENT OF CASE.

This is a suit on a promissory note of $2240, executed by appellants to respondent National Bank of Springfield, Mo., part of appellants being principals and part securities upon said note. The note in suit, of $2240.00, as shown by the pleadings and referee's report in said cause, is a renewal note, and consolidation of five original notes, the first of which was for $500.00, given July 27th, 1891; the second of $100.00 of the same date; the third for $500.00, dated January 24th, 1892, and credited by $100.00 payment thereon; the fourth for $340.00, dated January 16th, 1893; the fifth and last was for $600.00 dated May 29th, 1893.

(There were other notes given and paid, but did not enter into the note in suit.)

The answer was a general denial, and special defense of usury in the original notes and partial payments as set up in the several counts thereof.

The court referred the case to C. H. Hamlin, as referee to hear the evidence and find the facts. To the report so made by him no exceptions were taken by either side. The referee found that there was originally reserved at the making of the original notes in suit the sum of $40.65 usurious interest which entered into the notes. The referee further found that there was $540.40 usurious interest charged and received by the said Bank at the renewals of the said notes entering into the one in suit, and upon the renewals of it prior to October 29th, 1894, the date to which credits are claimed from the making of the said notes. The payments sued for in the case of Haseltine vs. the Central Nat'l Bank, No. 279, not being included in this suit. All of said notes being usurious the highest contract rate of interest in Missouri is eight per cent; without contract it is only six per cent.

The court allowed the usury originally first charged, and reserved by the Bank at the making of the several notes entering into the one in controversy, amounting to $40.65 as a credit upon the note, but disallowed the $540.40 received subsequently upon

the same notes by the Bank at the several renewals of said $2240.-00 note, and those notes which entered into it, as set forth in the several counts in the answer, and as found by the referee, for which appellants ask credit and as partial payments on the ground of the first clause of section 5098, which forfeited all interest after the first usurious contract. Therefore left the partial payments to apply only on the principal debt.

Assignment of Error and Prayer for Reversal.

Now come appellants in error and state to your honor that errors have been committed by the supreme court of Missouri against the rights of your appellants, in this:

I.

Appellants were entitled to the rights of certain credits applied upon the note of respondent under the Revised Statutes of the United States of 1878, Sec. 5198.

II.

Appellants are entitled to the said credits under the said United States statute, as construed by the Supreme Court of the United States in the case of Brown vs. Marion National Bank, 169 U. S., 416.

III.

That the decision against appellants is also against the statutes of Missouri, act of April 21st, 1891, page 170.

IV.

That the decision against appellants is also against the prior decisions of Missouri. See Moniteau National Bank vs. Miller, 73 Missouri, 187. Which last case was subsequent to the case of Burnett vs. National Bank, 98 U. S., 555, and is indirectly approved in the case of Brown vs. Marion National Bank, 169 U. S., 416.

V.

Said judgment is for 8 per cent interest, when the law of Missouri only provides for 6 per cent when no rate is agreed upon or, as in this case, where the rate is usurious and is forfeited. The Missouri statute is as follows:

"SEC. 3705. When no rate of interest is agreed upon, six per cent. allowed as legal interest."—"Creditors shall be allowed to receive interest at the rate of six per cent per annum, when no other rate is agreed upon, for all moneys after they become due and payable, on written contracts, and on accounts after they become due and demand of payment is made; for money recovered for the use of another, and retained without the owner's knowledge of the receipt, and for all other money due or to become due for the forbearance of payment whereof an express promise to pay interest has been made. (R. S. 1189, § 5972—q.)"

"SEC. 3706. Prrties may agree, in writing, for interest, not exceeding eight per cent.—The parties may agree, in writing, for the payment of interest, not exceeding eight per cent per annum, on money due or to become due upon any contract. (R. S. 1889, § 5973, amended, Laws 1891, p. 169—r.)"

Appellants ask that the judgment in the above entitled case be reversed, and that appellants be permitted to have their just and rightful claims.

BRIEF.

By the National Banking Act, section 5198, revised statutes of the United States, which is the law governing the case of National Banks, there are two provisions, upon the first of which this appeal is bottomed, and provides as follows: "The *taking, receiving, reserving or charging* a rate of interest greater than is allowed by law, when knowingly done, shall be *deemed a forfeiture* of the *entire interest* which the note, bill or other evidence of debt carries

with it, or which has been agreed to be paid thereon."

The Supreme Court of Missouri has construed this clause of said statute in a case on "all fours with this one." See the Monitea National Bank vs. Miller, 73 Mo., 187. The court there, on page 191 and 192 of the decision, says:

"The entire interest which the note carries with it is forfeited" * * "The effect of a stipulation for illegal interest by a National Bank is to deprive it of the right to recover more than the sum lent without interest" * * "The *receiving of illegal interest in furtherance of a stipulation to that effect cannot place the bank upon any better footing.*" "When renewal notes have been given in continuation of the same original loan, the *taint of usury* in the first transaction attaches to all such renewal notes, and when the Bank sues on the last renewal note, the *borrower is entitled to credit for all the interest paid* by him on the loan from the beginning, and not merely by excess above the legal rate."

"Whenever a National Bank charges or stipulates for an illegal rate of interest, all *payments* of interest, and not merely the excess, is illegal."

"*Hence all payments made* are to be *applied* to the *principal*, because the right of the Bank to any interest has been forfeited by the stipulation for usurious interest."

And in the same case, page 194, the Supreme Court further says:

"The statute of limitation has no application." "*This is not a suit by the debtor* to recover back illegal interest paid, but a suit by the Bank to recover usurious and legal interest. The *payments made applied* to the *principal*, etc," in the case at bar would give defendants credit for $540 40 more than given by the court below, and entitle the plaintiff to a judgment of only $1658.95, instead of the $2199.32.

This appears from the report of the referee, to which no ex-

ceptions were taken.

The same doctrine is held in Kansas, in 1895, the Supreme Court in First National Bank of Newton, vs. Turner 42 Pacific Rep. 936, speaking of these sections 5197 and 5198 U. S. Revised Statutes to National Banks, says :—

"You must not charge or receive usury. If you violate this law, and charge or contract for usury, you shall be punished by forfeiting all interest; and if in *addition to charging usury you go further* and actually receive it, the punishment shall be doubled." * * "*Upon the 15th of March, 1886, Turner paid $85.15. This sum must be credited upon the indebtedness of Turner, and not upon usurious interest.*"

The Supreme Court of Pennsylvania, in Guthrie vs. Reid, 107 Pa., St. 251, on page 257, says: "The interest bearing power of the note is destroyed, and when once so destroyed it remains so The taint of usury clings to it until paid. It *is a dead note therefore*, so far as interest is concerned."

And interest paid should be credited on note, not on forfeited interest.

So in National Bank of Auburn vs. Lewis, 73 N. Y. 516, the court says:—

"The moment usurious interest is charged or taken the forfeiture is established. * * The right to set off the usury taken or *to rebate the note to that extent* in this case does not rest upon the same principle as the statute in regard to that subject in this state, *but upon the construction of the Act of Congress.*"

'The entire line or series of notes discounted * * constituted one connected and continuous transaction * * and the taint of usury affects the whole; and when the bank sues upon the last of a series of renewal notes, the forfeiture of the entire interest follows as a necessary result, and *credit must be given for all the interest which has been paid from the beginning of the loan.*"

The U. S. Circuit Court of Indiana, in National Bank of Madison vs. Davis, 6 Central L. J, 106, holds *interest paid may be set off.*

There are numerous authorities to similar effect. That interest being forfeited by the contract for usury in the beginning, the subsequent payments will apply upon the principal which the appellants owe, and not upon an illegal agreement subsequently made without consideration, to apply the payments at renewals of the note to forfeited interest, to which the bank had no legal right. Hence strictly speaking the answer is not a set off, but a crediting of all payments upon a legal instead of an illegal and void demand of the bank.

The loan from the time made through all the renewals being one transaction, and as in the case at bar, it being usurious in its inception, is so throughout. And the interest being by law all forfeited and the note being a dead note, all payments should be applied upon the principal, the only amount which the appellants owed the bank.

The subsequent agreements at renewals, to apply the payments on forfeited interest, were without consideration and void. Hence, when the bank sues, the money had and received by it should be credited upon —the legal demand—the money borrowed

The original loans are admitted to be usurious, and the statute of the United States forfeits all interest on it and its renewals, as they are one and the same thing, being only new evidence of the old debt.

All the interest being forfeited a subsequent contract or agreement between the same parties to pay it is without consideration and void

The subsequent agreements to pay interest on a "*dead note*" being void, the bank has received certain monies which it should apply to what the appellants owe. They owe the original sum borrowed, and when the bank sues the court will apply and credit the partial payments upon the legal demand.

Such is the rule in Missouri in the case of National Bank of Moniteau vs. Miller, 73 Mo. 178, and supported by other authorities.

It is therefore asked that the present judgment be reversed and that the credits be applied upon the debt. And that the remainder beheld to bear only 6 per cent interest or the legal rate of Mo. and no more.

The Appellate Court of Kentucky in the case of

Sydner vs. Sterling Nat. Bank, 21 S. W. Rep. 1050.

Expressly refer to the above Missouri, case in the 73 Mo. 187, and quotes and follows the same.

While the late case of Brown vs. Marion National Bank decided in Feb., 1898, by the U. S. Supreme Court, reported in 18 Vol. Nat. Reports, page 390, refers to the above case of Sydner vs. Sterling National Bank, of Kentucky and expressly sustains it, and reverses a subsequent case decided by the Supreme Court of Kentucky, for not following the law laid down by said Supreme Court in the first decision of Sydner vs. Sterling Nat. Bank.

Thus the case of

Moniteau Nat. Bank vs. Miller in 73 Mo. 187.

On which we rely and which is on all fours exactly in point with this case has been not only followed by Kentucky but expressly approved by the Supreme Court of the United States in its recent decision.

The Kentucky case, Sydner vs. Bank, says: "The bank incorporate in the new notes usurious interest previously charg d as a part of the new principal, and this il'egal consideration pervaded the whole subsequent series of notes. Upon fresh renewal, interest was charged upon *usurious* interest, previously charged as a part of the new principal, and this illegal consideration pervades the whole subsequent series of notes." "Upon fresh renewal interest was charged upon usurious interest which had entered into the prior notes as principal." "The leading idea in these decisions

is that the new notes are mere renewals —new evidence of old debts —and given without new consideration; nor do the new notes operate as a payment of the debts for which they were given, and, as the usury embraced in the old notes taints the entire interest and renders it vicious and void, the agreement to pay it is without a y lawful consideration." * * "THE ENTIRE INTEREST on all the notes should be eliminated, and the judgment rendered for the principal alone, a d the PARTIAL PAYMENTS SHOULD BE APPLIED to the principal." And they say "The case of Bank vs. Miller 73 Mo. 189 decides the same question the same way."

Thus the transaction is treated as though but one note had been given in the beginning containing usurious interest. The same old debt continues and the partial payments from time to time apply on the principal debt, and not on forfeited interest, something that the bank is not entitled to, just the same as though renewal notes had not been given, as renewals were only new evidence of the old debt without any valid consideration.

The Supreme Court of the United States in Brown vs. Marion National Bank, 18 Vol. Supreme Court Rep, (Nat. series) page 390 affirm 169 U. S 416 the same doctrine and reverses a case for not being in harmony with the above case of Sydner vs. Bank in 21 S. W. Rep. 1050, and uses this language:

"It was contended in the Court of Appeals of Kentucky in the present case that its ruling" * * "was different from its subsequent ruling in Sydner vs. Bank." * * "The court conceded that the two cases were not in harmony." "It was the latter view which made it necessary for the appellants to prosecute the present appeal. The judgment in this case did not proceed upon the principal herein stated, in Sydner vs. Bank, but rested upon an erroneous interpretation of the statute, it must be reversed."

We therefore most respectfully submit that this case should be reversed.

JAMES BAKER,
Attorney for Appellants.